

## **EXHIBIT R**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 DR. SARI EDELMAN,

4 Plaintiff,

5 v. 21 Civ. 502 (LJL)

6 NYU LANGONE HEALTH SYSTEM, *et*  
7 *al.*,

8 Defendants.

Trial

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9 New York, N.Y.  
10 July 19, 2023  
8:55 a.m.

11 Before:

12 HON. LEWIS J. LIMAN,

13 District Judge  
14 -and a Jury-

15 APPEARANCES

16 MILMAN LABUDA LAW GROUP PLLC

Attorneys for Plaintiff

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18 TARTER KRINSKY & DROGIN LLP

Attorneys for Defendants

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1 The fourth element is causal connection.

2 A causal connection between the protected activity and  
3 the alleged adverse action can be established indirectly, by  
4 showing that plaintiff filed a complaint with NYU human  
5 resources, the protected activity was followed closely by the  
6 alleged adverse action, or directly through evidence of  
7 retaliatory animus directed against plaintiff by NYU because of  
8 her complaint. Plaintiff must establish by a preponderance of  
9 the evidence that NYU subjected her to the adverse employment  
10 action because of her participation in the protected activity.

11 With respect to this fourth element, it must be the  
12 case that NYU would not have taken the adverse action except as  
13 a response to plaintiff's protected activity. NYU must have  
14 taken the adverse action because of an intent to retaliate  
15 against plaintiff for complaining about employment  
16 discrimination.

17 NYU's retaliatory intent may be imputed from the  
18 intent and conduct of a subordinate if NYU's decision to  
19 terminate was proximately caused by a subordinate who had a  
20 retaliatory motive and intended to bring about the adverse  
21 employment action. NYU, however, must have been negligent or  
22 reckless in giving effect to the retaliatory intent of its  
23 low-level employees, which requires plaintiff to prove that NYU  
24 knew or reasonably should have known about the retaliatory  
25 motivation. Of course, to make this finding, you must also

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1 the alleged adverse actions against Dr. Edelman at least in  
2 part because she engaged in a protected activity, and the  
3 burden is on Dr. Edelman to prove that.

4 Unlike her Title VII claims, plaintiff also seeks to  
5 hold three of the individual defendants -- Mr. Rubin,  
6 Mr. Antonik or Mr. Swirnow -- liable for retaliation under New  
7 York State Human Rights Law. Although New York State Human  
8 Rights Law does not allow employees to be liable as employers,  
9 you may find these particular employees nonetheless  
10 individually liable under an aiding-and-abetting theory to an  
11 employer who has retaliated in violation of New York State  
12 Human Rights Law. Therefore, to find that these individual  
13 defendants aided and abetted such a violation, you must first  
14 find that the employer, NYU, violated New York State Human  
15 Rights Law. An individual defendant cannot aid and abet his  
16 own retaliatory conduct; he may only aid and abet another's  
17 violation of the law. You may, however, find aiding and  
18 abetting liability based on the same conduct that serves as the  
19 predicate for NYU's liability, as long as you have found that  
20 NYU engaged in retaliatory conduct. If you find that the  
21 individual defendants actually participated in the decision to  
22 not renew plaintiff's contract and to terminate her employment,  
23 then you may find them liable under an aider-and-abettor  
24 theory, even if they did not have hiring or firing authority.  
25 Furthermore, you must also find that they possessed the same

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1 deter a person from engaging in protected activity was taken  
2 for a nonretaliatory reason.

3 In deciding whether the defendant you are considering  
4 has satisfied his or its burden on this issue, follow these  
5 steps: Consider whether the defendant has proved that the  
6 decision to take an action against plaintiff that was  
7 reasonably likely to deter a person from engaging in protected  
8 activity was motivated by a nonretaliatory reason in addition  
9 to a retaliatory motive. If you find that the defendant you  
10 are considering was not motivated by any nonretaliatory reason,  
11 you must find for plaintiff. If, however, you find that the  
12 defendant had a nonretaliatory reason or reasons for his or its  
13 action, you must determine whether the defendant has proved  
14 that he or it would have taken this action against plaintiff  
15 based upon these nonretaliatory reasons alone.

16 Like her state human rights law claim, plaintiff also  
17 seeks to hold three individual defendants -- Mr. Rubin,  
18 Mr. Antonik or Mr. Swirnow -- liable for retaliation under the  
19 city human rights law. Unlike state human rights law, however,  
20 you may those employees individually liable, both under a  
21 direct liability theory and an aiding-and-abetting theory. The  
22 standards for an aiding-and-abetting theory are the same as  
23 those under the state human rights law. The instructions I  
24 gave you with respect to aiding and abetting under the state  
25 human rights law also apply under the city human rights law.

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1 Therefore, to find that the individual defendants aided and  
2 abetted retaliation, you must first find that the employer,  
3 NYU, retaliated in violation of city human rights law. You may  
4 find aiding and abetting liability based on the same conduct  
5 that serves as the predicate for NYU's liability, as long as  
6 you have found that NYU engaged in retaliatory conduct. Again,  
7 if you find that the individual defendants actually  
8 participated in the decision to not renew plaintiff's contract,  
9 then you may find them liable under an aider-and-abettor  
10 theory, even if they did not have hiring or firing authority.  
11 Furthermore, you must also find that they possessed the same  
12 retaliatory motive or intent as the employer. In other words,  
13 they must have engaged in direct and purposeful participation  
14 in the retaliation. But in addition to an aiding-and-abetting  
15 theory, you may also find that the individual defendant, you  
16 may also find the individual defendant liable for retaliation  
17 under the New York City Human Rights Law, without regard to  
18 whether they qualify as an employer or supervisor, and without  
19 regard to whether NYU has itself retaliated against plaintiff,  
20 if you find that the individual defendant has retaliated  
21 against plaintiff for her engagement in protected activity.

22 Plaintiff brings a gender discrimination claim against  
23 Mr. Antonik and NYU under the New York City Human Rights Law  
24 based on certain remarks made to her by Mr. Antonik. Under the  
25 city human rights law, it is unlawful for an employer to